

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

STATE *v.* DIVENSON PETION, SC 19938

*Judicial District of Stamford-Norwalk*

**Criminal; Assault in the First Degree; Sufficiency of the Evidence; Whether Scar on Victim’s Forearm Constituted a Serious Physical Injury.** Following a jury trial, the defendant was convicted of two counts of assault in the first degree in violation of General Statutes § 53a-59 (a) (1) in connection with an incident in which he cut two victims with a knife. One of the victims, Rosa Bran, sustained two cuts on her forearm. On appeal, the defendant claimed that the evidence was insufficient to support his conviction for assaulting Bran because the state failed to prove that she suffered a “serious physical injury.” The defendant argued that Bran’s injuries were limited to “an abrasion and two small lacerations on her left forearm.” The Appellate Court (172 Conn. App. 668) upheld the defendant’s conviction, relying on testimony from Bran and her physician, as well as photographic evidence concerning her injuries, which indicated that one of the two lacerations resulted in a significant and readily visible scar. The court opined that the jury reasonably could find that such scarring constituted a serious disfigurement and, therefore, a serious physical injury. The defendant appeals, and the Supreme Court will decide whether, in rejecting his claim that there was insufficient evidence to support his conviction of assault in the first degree as to Bran, the Appellate Court properly concluded that a jury reasonably could have found that the one and one-half inch scar on Bran’s forearm constituted a serious disfigurement and, therefore, a serious physical injury as contemplated by § 53a-59 (a) (1).

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CLAUDIA PUFF *v.* GREGORY PUFF, SC 20058

*Judicial District of Stamford-Norwalk*

**Dissolution of Marriage; Whether Appellate Court Properly Reversed Contempt Judgment.** In this dissolution of marriage case, a hearing was held on February 19, 2014, on the plaintiff’s postjudgment motion to modify alimony. At the hearing, the defendant’s counsel



orally presented an agreement by which the defendant was to pay an amount of periodic alimony and the plaintiff had the right to assign the alimony to a special needs trust, subject to the defendant's ability to deduct the alimony from his gross income on his federal tax return. The plaintiff was required immediately to secure, or endeavor to secure, a legal opinion that such an arrangement would not affect the deductibility of the alimony payments. The court approved the oral agreement. Although the parties had agreed to submit a document embodying the terms of the agreement to the court, disagreements between them subsequently arose, with the plaintiff taking the position that there had been no meeting of the minds sufficient to form an agreement. The court ultimately reduced the terms of the oral agreement to a written decision. Thereafter, the defendant filed a motion for contempt, claiming that the plaintiff wilfully violated the court's order by failing to produce any legal opinion regarding the tax deductibility issue and by instead placing obstacles in the way of reducing the oral agreement to writing, including the filing of a motion to open the agreement that she later withdrew. At the hearing on the contempt motion, the plaintiff's counsel, relying on a draft opinion letter, argued that it was impossible to comply with the court's order because the inclusion of the defendant as a residual beneficiary likely jeopardized his right to deduct alimony payments. The trial court granted the motion for contempt on finding that the plaintiff wilfully violated the February 19, 2014 order, and it awarded attorney's fees. The plaintiff appealed. The Appellate Court (177 Conn. App. 103), while affirming the trial court's approval of the agreement, reversed the judgment of contempt on determining that the finding of contempt was clearly erroneous given the undisputed fact that the plaintiff had made at least some effort to secure the opinion letter required under the agreement. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly reversed the trial court's judgment of contempt. The defendant argues that the trial court acted within its discretion in finding that the plaintiff failed to make a good faith effort to obtain the required legal opinion letter. The defendant further contends that the record shows that the trial court's contempt finding was based on more than just the plaintiff's lack of compliance with the legal opinion requirement, and, therefore, that even if the plaintiff had satisfied that requirement, the Appellate Court should have upheld the contempt finding based on the other grounds of contempt.

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ELIZABETH BURKE *v.* GREGORY MESNIAEFF, SC 20062

*Judicial District of Stamford-Norwalk*

**Torts; Assault and Battery; Whether Jury Charge on Defense of Justification Improperly Included Charge on Criminal Trespass Where Plaintiff Claimed that Premises Were Marital Property; Whether Evidence Insufficient to Support Defense of Defense of Others.** The plaintiff brought this action alleging that she sustained personal injuries as a result of an assault and battery by the defendant. At the time of the incident, the parties were married and residing together in New York, but the incident occurred at a house in Sharon, Connecticut that the defendant had purchased in his name alone. Enraged and screaming, the plaintiff confronted the defendant at the Sharon house while a tour of the house was being conducted by an historic preservation organization. The defendant told the plaintiff to leave, grabbed her upper arm and escorted her from the house and down the driveway. The plaintiff resisted and attempted to strike him and break loose from his hold and return to the house. The jury returned a verdict in favor of the defendant, finding that his conduct toward the plaintiff constituted intentional assault and battery but that her recovery was barred by the special defenses of justification and defense of others. The plaintiff appealed, claiming that the trial court improperly charged the jury on the special defense of justification by incorporating a charge on criminal trespass because, as a matter of law, she could not have been trespassing at the Sharon house because it was marital property. The Appellate Court (177 Conn. App. 824) affirmed the judgment, finding that it did not need to determine whether the plaintiff had a right to be on the premises because the jury did not find that she was trespassing. The Appellate Court further held that, even if it were to assume that the jury had been misled by the criminal trespass charge, the plaintiff was not harmed because the jury found that her recovery was not barred by the special defense of wrongful conduct, which necessarily relates to trespassing. The Appellate Court also rejected the plaintiff's claim that the special defense of defense of others was legally barred due to insufficient evidence, holding that the jury reasonably could have found that the defendant's response to the plaintiff's actions was reasonable and that he had used reasonable physical force in the defense of others when he escorted her from the house. The plaintiff appeals, and the Supreme Court will consider whether the Appellate Court properly determined that (1) the trial court did not err in charging the jury on the defendant's justification defense of criminal trespass, (2) the special defense of defense of others was not barred by insufficient evidence, and (3) no finding needed to be made with respect to the plaintiff's rights to the property.



MALKIE WIEDERMAN *v.* ISSAC HALPERT et al., SC 20066

*Judicial District of Waterbury*

**Standing; Whether Plaintiff, as Shareholder of Closely-Held Limited Liability Companies, Had Standing to Sue Other Shareholders Based on Colorable Claims of Direct Injury That Were Separate and Distinct From any Injury to Companies.** The parties entered into an agreement that provided for the creation of several limited liability companies for the purpose of purchasing and developing real property. The plaintiff and the defendants were shareholders in the companies, and the plaintiff brought this action against the defendants raising several claims of injury based on the defendants' alleged misappropriation and conversion of funds, commingling of accounts and securing of funds by the use of fraudulent documents. The trial court rendered judgment for the plaintiff, and the defendants appealed, arguing that the trial court erred in denying their motion to open the judgment because the plaintiff lacked standing to assert her claims. They specifically argued that the plaintiff lacked standing because her claims were based on injuries to the companies, as opposed to injuries to her individually. The Appellate Court (178 Conn. App. 783) disagreed, concluding that the plaintiff established a colorable claim of direct injury and therefore that she was aggrieved by the defendants' conduct. It determined that the plaintiff's complaint did not allege that she had standing solely by reason of being a member of the companies but, rather, alleged that the defendants conducted the day-to-day management of the companies in a manner that damaged her personally and directly in that she never received any portion of the profits or distributions from the developed properties. The Appellate Court further determined that the plaintiff's allegations that the defendants had misappropriated and wasted funds that were due to her and that they had forged her signature on certain financial documents claimed injuries that were not indirect or derivative, but were peculiar to her. The defendants appeal, and the Supreme Court will decide whether the Appellate Court properly determined that the plaintiff had standing to sue the defendants.

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WILLIAM O'BRIEN *v.* CITY OF NEW HAVEN, SC 20069

*Judicial District of New Haven*

**Municipalities; Whether Plaintiff's Lawsuit Complied With Notice Requirement and Time Limitations of Municipal Employee Indemnification Statute, General Statutes § 7-101a.** The plaintiff, the former tax assessor for the defendant city, brought



this action pursuant to General Statutes § 7-101a (b), seeking indemnification for attorney's fees and costs he incurred while defending an action brought against him in 2010, which alleged misdeeds involving his duties as assessor. Section 7-101a (b) requires each municipality to "save harmless" any municipal employee from financial loss and expense, including legal fees and costs, arising out of a lawsuit alleging wilful or ultra vires acts on the part of the employee while acting in the discharge of his duties, unless judgment is rendered against the employee. The 2010 action concluded with a judgment in the plaintiff's favor in 2015. The plaintiff filed a notice of his intent to seek indemnification from the defendant within four months of the judgment, and he brought the present action within six months of the judgment. The defendant filed a motion to dismiss the action, claiming that the plaintiff's notice and action were untimely pursuant to § 7-101a (d), which provides that "[n]o action shall be maintained . . . unless such action is commenced within two years after the cause of action therefor arose nor unless" notice is given to the municipality of an intent to commence such action "within six months after such cause of action has accrued." Specifically, the defendant claimed that the term "cause of action" in § 7-101a (d) should be interpreted as the third party's action against the municipal employee, and thus referred to the 2010 tort action brought against the plaintiff, thus rendering the notice and present action untimely. The trial court denied the motion to dismiss and rendered judgment in favor of the plaintiff on determining that the plaintiff's notice and action were timely filed within six months of the date that the tort action was resolved. The defendant appealed, and the Appellate Court (178 Conn. App. 469) affirmed the trial court's judgment. The court explained that a plain reading of the text of § 7-101a (d) and its relationship to other similar statutes revealed that the plaintiff's claim for indemnification accrued, and the notice and limitation periods began to run, when he first could have successfully held the defendant liable, which could not have occurred until the 2010 tort action was resolved in his favor, and that, therefore, the notice and action were timely filed. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly affirmed the trial court's judgment concluding that the plaintiff's lawsuit complied with the notice requirement and the time limitations set forth in § 7-101a (d).

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78 OLIVE STREET PARTNERS, LLC *v.* CITY OF  
NEW HAVEN et al., SC 20126  
*Judicial District of New Haven*

**Environmental Protection; Zoning; Whether Trial Court Properly Dismissed Action Brought Pursuant to General Statutes § 22a-16 on Ground that It Constituted Impermissible Collateral Attack on Previous Judgment.** The plaintiff filed an administrative appeal in the trial court challenging the city of New Haven's approval of Spinnaker Residential, LLC's application to construct a mixed use development project on property located near the plaintiff's apartment complex. The court remanded the case to the city's planning commission on concluding that Spinnaker's site plan did not comply with a city zoning ordinance mandating that the rate of stormwater runoff from a property shall not increase after development. On remand, Spinnaker submitted a modified site plan application, which was approved by the commission's staff. Subsequently, the plaintiff filed a petition to intervene pursuant to General Statutes § 22a-19 of the Connecticut Environmental Protection Act (CEPA), which permits one to intervene in an administrative proceeding for the limited purpose of raising environmental issues. The commission took no action on the petition to intervene, but it approved the modified site plan application. The plaintiff then filed a second administrative appeal, challenging the approval of the modified site plan application and the commission's refusal to entertain its petition to intervene. The trial court dismissed the administrative appeal for lack of jurisdiction. The plaintiff then brought this action pursuant to General Statutes § 22a-16 of CEPA, which permits one to bring an action seeking the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction. The plaintiff alleged that Spinnaker's modified site plan would result in an increase in stormwater runoff that would present an unreasonable risk of pollution to Long Island Sound. The trial court granted the defendants' motion to dismiss the action, ruling that the plaintiff was impermissibly using an independent action under § 22a-16 to collaterally attack the dismissal of its second administrative appeal, and that equity required that the protracted litigation over Spinnaker's application come to an end. In so ruling, the trial court rejected the plaintiff's claim that its § 22a-16 action was proper under *Waterbury v. Washington*, 260 Conn. 506 (2002), which held that the exhaustion of remedies doctrine does not apply to actions brought pursuant to § 22a-16. The plaintiff appeals, claiming that the trial court improperly concluded that (1) the plaintiff lacked standing to bring



the § 22a-16 action, (2) the plaintiff's § 22a-16 action constituted an improper collateral attack on the judgment dismissing the plaintiff's second administrative appeal, (3) the plaintiff was required to exhaust its administrative remedies, and (4) the equities of the case required dismissal.

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ESSEX INSURANCE COMPANY *v.* WILLIAM KRAMER &  
ASSOCIATES, LLC, SC 20130

*United States Court of Appeals for the Second Circuit*

**Negligence; Statute of Limitations; Continuing Course of Conduct; Whether Evidence Sufficient to Support Jury's Finding that Negligence Claim was Timely Because Statute of Limitations Topped by Continuing Course of Conduct.** The plaintiff, an insurer based in Virginia, provided coverage for a commercial property in Florida that was damaged by a hurricane in 2005. The defendant, an insurance adjuster based in Connecticut, was retained by the plaintiff to provide adjustment services with respect to the resulting storm damage claim. Among the defendant's duties to the plaintiff was informing the plaintiff of any mortgages on the property so that the plaintiff could account for the interest of any mortgagee when making payments for the loss. In 2006, the defendant received a letter identifying a mortgage on the property in favor of Intervest National Bank as mortgagee. Despite this notification, the defendant repeatedly represented to the plaintiff that there were no mortgages on the property. The plaintiff made its final payment for the storm damage claim on the property in 2007, without accounting for Intervest's interest. In 2011, Intervest brought an action against the plaintiff, claiming that the plaintiff had failed to protect Intervest's interest in the property. During the ensuing litigation, the plaintiff obtained a copy of the letter identifying Intervest's interest in the property, and the plaintiff paid Intervest \$1 million to settle. In 2013, the plaintiff brought this action against the defendant in Connecticut federal district court, alleging that the defendant was negligent in failing to advise it of Intervest's interest in the property. The plaintiff argued that its claim was timely, notwithstanding the three year statute of limitations for negligence actions under General Statutes § 52-577, because the continuing course of conduct doctrine applied. That doctrine provides that a defendant's continuing course of conduct will toll a negligence statute of limitations when there is a special relationship that gives rise to a continuing duty or when the defendant commits later wrongful conduct related to the initial wrongful conduct. This action was tried to a jury, which found



in favor of the plaintiff and awarded it \$1.25 million in damages. The defendant then filed a postverdict motion for judgment as a matter of law, arguing that the evidence was insufficient for the jury to find that a continuing course of conduct tolled the statute of limitations. The district court agreed, granting the motion and rendering judgment in favor of the defendant. The plaintiff appealed the district court's judgment to the United States Court of Appeals for the Second Circuit. The Second Circuit determined that Connecticut law regarding the interpretation of § 52-577 and the continuing course of conduct doctrine is unclear and certified the following question for review by the Supreme Court pursuant to General Statutes § 51-199b: Is the trial evidence legally sufficient to support the jury's finding that the statute of limitations was tolled at least through October 21, 2010, rendering the insurer's claim timely?

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CARMINE CENATIEMPO et al. v. BANK OF AMERICA, N.A., SC 20150  
*Judicial District of Stamford-Norwalk at Stamford*

**Negligence; Foreclosure; Whether Loan Servicer Owes Legal Duty to Borrowers to Act Diligently and Timely in Loan Modification Process; Whether Loan Servicer's Alleged Failure to Act Diligently and Timely in Loan Modification Process May Constitute Unfair Conduct under CUTPA.** The plaintiffs, Carmine and Sandra Cenatiempo, gave a mortgage on their home in Weston as security for a loan serviced by the defendant. The plaintiffs defaulted on the loan in 2009, and the defendant commenced a series of foreclosure proceedings that ended in 2015, when the defendant offered a permanent loan modification to the plaintiffs. The plaintiffs thereafter brought this action against the defendant, alleging that the defendant's failure to act diligently and timely in the loan modification process constituted negligence and a violation of the Connecticut Unfair Trade Practices Act (CUTPA). The defendant filed a motion to strike the complaint in its entirety, claiming that it failed to state a claim upon which relief could be granted because there was neither an actionable duty owed to the plaintiffs for purposes of their negligence claim nor conduct that came within the scope of CUTPA. The trial court agreed and granted the defendant's motion to strike, concluding that the duty alleged by the plaintiffs was not recognized under Connecticut law and that the defendant's alleged conduct was not unfair or deceptive for purposes of CUTPA. After judgment was rendered on the stricken complaint, the plaintiffs filed this appeal. The Supreme Court will decide whether the trial court erred in striking the plaintiffs' CUTPA



claim on the ground that the defendant's conduct was not "unfair" under the act. The Supreme Court will also decide whether the trial court erred in striking the plaintiffs' negligence claim where the plaintiffs argue that the defendant owed them a duty and that they pleaded sufficient allegations to support a negligence per se theory.

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

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